CMPMO No. 289 of 2006.

17.7.2007 Present: Mr. K.S. Kanwar, Advocate, for the petitioners.

Mr. K.D. Sood, Advocate, for the respondents.

By the impugned order dated 15th September, 2006 passed by the learned Civil Judge (Junior Division) Court No.1, Paonta Sahib, District Sirmaur the application filed by the petitioners-plaintiffs under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure on 13th June, 2006 seeking amendment of the plaint was rejected.

The suit in which the aforesaid application was filed had earlier been dismissed by the trial Court on 30th September, 2005. In an appeal filed by the petitioners against the judgment and decree dismissing the suit, the learned appeal Court vide judgment dated 29th April, 2006 remanded the case to the trial Court because the appeal Court was of the view that an error had crept in the trial Court judgment in the disposal of the suit on the ground that an application filed by the petitioners-plaintiffs in the trial Court during the pendency of the suit under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint had not been decided and disposed of by the trial Court and without deciding and disposing of this application the trial Court had proceeded to dispose of the suit itself. This application for amendment was filed by the petitioners-plaintiffs in the trial Court on 21st August, 2002. Moved and influenced by this patent irregularity the learned appeal Court remanded the suit to the trial Court by making the following observation:-

> ".. The case as such is ordered to be remitted back to the learned trial Court as required under Order XLI, Rule 23-A CPC with the direction to re-register the case at its original number and to adjudicate the application under Order 6 Rule 17 CPC at first filed by the plaintiffs and thereafter to proceed further in accordance with law qua the trial of the suit. The parties are

directed to appear before this Court on dated 22.5.2006."

The effect of the aforesaid remand order, therefore, was that when the trial Court became seized of the suit on the basis of the remand order it had before it the amendment application filed on 21st August, 2002 and the remand order enjoined upon it the duty and responsibility to dispose of this amendment application. Strangely, however, the petitioners-plaintiffs for unexplained reasons decided to withdraw the aforesaid amendment application which they had filed on 21st August, 2002 and instead elected to file a fresh amendment application on 13th June, 2006, which admittedly was filed after the passing of the judgment in appeal by the appeal Court on 29th April, 2006. One of the main reasons which influenced the learned Court below in rejecting the second amendment application vide the impugned order dated 15th September, 2006 was that the trial Court was not competent to entertain the second amendment application because of the operative force of the remand order. I fully agree with this view of the learned trial Court.

On the aforesaid having been made clear the learned Counsel for the petitioners submits that in order to overcome the aforesaid technical difficulty the petitioners be permitted by this Court to withdraw the second amendment application in the trial Court and to pursue the first amendment application filed on 21st August, 2002. In my opinion, this would be a proper course of action because without causing any prejudice to the respondents it will serve the ends of justice.

While therefore partly allowing this petition accordingly and setting aside the impugned order in so far as its operative part alone is

concerned and permitting the petitioners to withdraw the subsequent amendment application, I direct that the first amendment application shall stand revived and restored to its original position. The learned trial Court shall proceed to dispose of the first amendment application on its merits and in accordance with law uninfluenced by the passing of the impugned order by it on 15th September, 2006.

This petition accordingly is allowed partly subject to the petitioners paying to the respondents costs of Rs.5,000/- in four weeks from today.

The parties through their learned Counsel are directed to appear before the learned trial Court on 23rd August, 2007.

CMP No. 565 of 2006.

In view of the disposal of the main petition this application is also disposed of and the interim order dated 12th October, 2006 is vacated.

July 17, 2007. **(V.K. Gupta), C.J.**
(rc)